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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Katrien Maria Josefa Van Laere

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YOUNG & THOMPSON

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EXAMINER

WILLIAMS, LELA

ART UNIT

PAPER NUMBER

1787

NOTIFICATION DATE

DELIVERY MODE

09/29/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,002	<b>Applicant(s)</b> VAN LAERE ET AL.	
	<b>Examiner</b> LELA S. WILLIAMS	<b>Art Unit</b> 1787	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 1-10, 13-16, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/16/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 11-12 in the reply filed on July 22, 2010 is acknowledged. The traversal is on the ground(s) that the common technical feature is an effervescent system and temperature of at least 35°C. This is not found persuasive given the effervescent system is apart of fiber composition which also contains pectin and indigestible oligosaccharide. Further all components of the fiber composition are disclosed in US 6,884,445; pectin (col. 5, lines 40-45), indigestible oligosaccharide (col. 5, line 29), and the teaching of the use of an effervescent system with pectin (col. 2, lines 1-10). Given that all three components are found in each of Groups I-IV, they comprise the common special technical feature. Liquid having temperature of 35 C is not found in Group IV, however, and therefore cannot be part of the common special technical feature.

2. The requirement is still deemed proper and is therefore made FINAL.

3. Claims 1-10, 13-16, and 18-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July, 22, 2010.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1787

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Koren et al. US 6,884,445.**

Koren discloses a hot liquid fiber product comprising a calcium salt having a solubility below about 0.15 g per 100 ml of water at 20°C and at pH 7 which provides more than 0.05 g of dissolved calcium per 100ml water at a pH below 5 and at a temperature of 37°C (col. 6, lines 45-65), fiber between 0.1 g and 10g per 100ml (said range clearly falls within the claimed range) (col. 11, lines 13-15), an indigestible oligosaccharide with a degree of polymerization between 2 and 60 monose units (col. 5, line 29), also the product has a viscosity below about 100mPas (col. 12, lines 45-50) and “[p]erferably the composition has a viscosity at pH 3 and 37°C which exceeds 250mPas.” (col. 12, lines 55-58).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 1787

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
9. **Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koren et al. US 6,884,445 in view Tarral WO 96/33694.**

**Regarding claim 11**, Koren discloses a hot liquid fiber product comprising a reconstitutable composition comprising a mixture of at least 0.1g of pectin (col. 6, lines 10-20), an indigestible oligosaccharide with a degree of polymerization between 2 and 60 monose units (col. 5, line 29). The composition also comprises a calcium salt having a solubility below about 0.15 g per 100 ml of water at 20°C and at pH 7 which provides more than 0.05 g of dissolved calcium per 100ml water at a pH below 4 and at a temperature of 37°C (col. 6, lines 45-65). It is noted that the viscosity of the reference exceeds that which is presently claimed at 37°C (col. 12, lines 41-65); however the reference does disclose “[t]o decrease the viscosity of the present composition (at near neutral pH), ingredients may advantageously be added” (col. 13, lines 10-20). Therefore, given the guidance of the reference, one of ordinary skill would have been able to obtain a viscosity below about 100mPas at a pH that exceeds 4. It is also noted that although the reference teaches the use of an effervescent system with pectin is known in the art (col. 2, lines

Art Unit: 1787

1-10) and the use of a calcium salt, such as calcium carbonate, the reference does not disclose the invention to comprise an “effervescent system”.

Tarral discloses a composition “compris[ing] at least one pectin associated with a complex composition comprising firstly an effervescent pair which easily disperses the pectin in water and hydrates it and regulates the gellification process irrespective of the hardness of the water used for the suspension, and secondly a mixture of compounds which provide the calcium ions necessary for the formation of the gel in an acid medium, together with magnesium ions regulating the kinetics of the calcium availability.”(Abstract).

Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the effervescent system as disclosed by Tarral into the invention of Koren in efforts to disperses the pectin in water and hydrate it and regulate the gellification process.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1787

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS  
Examiner, Art Unit 1787

/L. S. W. /

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1787